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Subject: N&O: Atlantic Coast Pipeline can't enter some private properties, federal judge says

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By John Murawski

March 21, 2018

As the Atlantic Coast Pipeline doubles down on slashing trees on hundreds of private properties in North Carolina, a federal judge has taken the unusual step of barring the energy consortium from clearing trees on two rural homesteads.

U.S. District Judge Terrence Boyle said the interstate pipeline developer must first pay the two landowners before its chainsaw crews can enter their properties.

The ruling comes as the planned 600-mile natural gas project, which is already more than a year behind schedule, is running up against deadlines that could add months to the construction timeline. Led by Charlotte's Duke Energy and Richmond's Dominion Energy, the Atlantic Coast Pipeline plans to bring vast supplies of natural gas to North Carolina from fracking operations in Pennsylvania and West Virginia.

The pipeline developers say they face a March 31 deadline to cut down trees before the start of the nesting season for migratory birds in Eastern North Carolina. Anticipating delays, the Atlantic Coast Pipeline last Thursday asked for a six-week federal extension, until May 15, to buy time and get the tree-cutting out of the way so workers can spend the summer and autumn trenching and laying pipe. If granted an extension, the pipeline company has vowed to visually survey every tree for nests and eggs, promising to avoid chopping down bird-occupied trees until the newly hatched fledglings have flown away.

In last week's private property dispute, Boyle rejected the Atlantic Coast Pipeline's arguments that its schedules and corporate priorities are in the public interest and should take precedence over the concerns of the local landowners. In his decision Friday, the judge was unmoved by the pipeline developers' urgent plea that they must begin cutting trees as soon as possible, or risk blowing the deadline and being forced to delay construction on the \$6 billion project until next winter.

Boyle ruled that Enfield township fire chief Ronnie Locke and Marvin Winstead Jr., a 67-year-old Nash County farmer, presented a compelling case that the Atlantic Coast Pipeline's landmen were uncommunicative or deceptive in their dealings, and the facts will need to be sorted out at trial, if Locke and Winstead don't choose to settle with the company.

Some 1,000 homes and farms in North Carolina stand in the path of the proposed pipeline. The majority of the landowners have voluntarily signed agreements and accepted financial compensation for hosting the underground natural gas conduit on their land. The few holdouts in North Carolina have prompted the pipeline company to file 29 legal actions in U.S. District Court, but many of those landowners have since settled and accepted payment.

Winstead and Locke are among the handful who refuse to make concessions. In addition to his fire chief duties, Locke is the town's planning and zoning director, and he says he'd sign a deal with the Atlantic Coast Pipeline if it agreed to reroute the pipeline path away from his house. In a March 14 court hearing, Locke told Boyle not only will he lose his timber crop, but the 36-inch high-pressure pipeline running through his property will make it a lot harder to sell the land to residential developers in the future.

"Who in the world is going to buy a lot and build a house right there close to a pipeline?" Locke said at the court hearing. "So you're losing that, plus your farm value is going down, too. So you lose all the way around."

Winstead has turned pipeline opposition into a full-time occupation, saying the project economically exploits local residents and poses significant environmental hazards. He also condemns fracking, the controversial natural gas drilling technology used to extract the gas to be sent through the pipeline. Winstead is holding out hope that at least one of the many legal challenges against the pipeline prevails and the project is never built.

"You can call me a tree-hugger if you want to," Winstead said in an interview. "I can accept (the pipeline), or I can engage in civil disobedience."

Locke's Norfolk, Va.-based lawyer, Chuck Lollar Sr., said the ruling is highly unusual because it requires compensatory payment to landowners as a condition of entering private property. In the majority of cases, Lollar said, the Atlantic Coast Pipeline is accessing private property to start cutting and earth moving as the negotiations over compensation drag on, with the intention of paying the landowners at a later time. This sequence creates a sense of inevitability and puts the landowners at a disadvantage when negotiating for a fair price for the loss of the use of their property, he said.

The amount of compensation property owners receive is usually the result of a negotiated compromise, but in rare instances the amount is determined by going to trial. One of those two outcomes is where Locke's and Winstead's cases are headed as well. Lollar, who practices with Raleigh law firm Edwards Kirby, said if Locke's case does go to trial, it's likely his law partner and former U.S. presidential candidate John Edwards would help with picking the jury.

Lollar acknowledged that delays could have serious consequences for the Atlantic Coast Pipeline, which is trying to hew to a schedule with project completion slated for late 2019.

"It will not pump gas," Lollar said. "The connection with Winstead's and Locke's property won't be there. It's a segment of the pipeline missing."

Property-rights attorneys say while it's true that large corporations can strong-arm landowners in eminent domain cases, it's also true that some landowners have unreasonable expectations on compensation because their judgment is clouded by emotions. Atlantic Coast Pipeline spokesman Aaron Ruby said the company is not nickel-and-diming local residents, but only seeking a fair outcome.

"We would have preferred to reach mutual agreements with these landowners, as we've done with more than 80 percent of landowners along the route," Ruby said by email.

"This was an absolute last resort that we took after exhausting every other option," Ruby said. "We remain committed to fairly compensating all landowners for the use of their land, and we'll continue working with them to minimize impacts on their property and daily lives."

Duke and Dominion say their pipeline, which will run through eight North Carolina counties along Interstate 95, will deliver clean natural gas to fuel state-of-the-art power plants that are replacing coal-burning plants. The gas will also go to Piedmont Natural Gas, which will send it out to households and businesses for cooking and heating. The Atlantic Coast Pipeline has plenty of supporters in affected states who expect the project to bring economic development to struggling rural counties.

The Atlantic Coast Pipeline on Jan. 31 sued 29 landowners in eminent domain proceedings to gain access to their properties to start tree-clearing before the company paid the owners. The project will create a 50-foot-wide easement on which the property owners will not be able to grow trees, install swimming pools or build structures. Some properties will also have to cede land for access roads.

On the day that Locke and Winstead testified in court, they were among 13 landowners whose properties were subject to condemnation actions by the Atlantic Coast Pipeline. But Locke and Winstead were the only two who showed up to testify, and they were the only ones who got favorable decisions from the judge.

They told Boyle that the Atlantic Coast Pipeline has not negotiated in good faith with them. Winstead said surveyors entered his land without permission, offered misleading information and provided confusing surveys. Winstead later learned the surveyors were not licensed in North Carolina, prompting him and others to file complaints to the N.C. Board of Examiners for Engineers and Surveyors, the N.C. Attorney General and the N.C. Department of Environmental Quality.

The state examiners board in 2015 determined that the Atlantic Coast Pipeline's surveying contractors were practicing without a license. Complaints haven't been limited to North Carolina. On Friday, the Virginia Department of Environmental Quality issued notices of violations accusing the Atlantic Coast Pipeline's contractors of failing to follow

environmental rules on 15 sites when cutting trees in wetlands and near streams. The agency said the Atlantic Coast Pipeline faces potential fines and will have to take corrective action to undo any environmental damage it may have caused.

Lollar suggested in court last week that surveyors pulled a bait-and-switch on Locke, by increasing the amount of land they wanted to use on Locke's property for the pipeline while reducing their initial offer from \$20,000 to \$14,000. Locke, of Halifax County, said that when he requested the line be re-routed away from his house, it took more than a year to get a response. Finally, the developers said it was too late to make changes.

Locke said he was continually frustrated with his dealing with the landmen.

"One time it was an acre and some, another time it's two acres. Nobody would give me a clear answer, and I tried to work with them, but they have not worked with me," Locke testified. "All the maps, the acreage was different, so that's why I was not going to agree with anything they said or did until I learned the facts."

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